

Sills Cummis & Gross

A Professional Corporation

The Legal Center
One Riverfront Plaza
Newark, New Jersey 07102
Tel: (973) 643-7000
Fax (973) 643-6500

101 Park Avenue
28th Floor
New York, NY 10178
Tel: (212) 643-7000
Fax: (212) 643-6500

David L. Cook
Member
Admitted In NJ, NY
Direct Dial: 973-643-5695
Email: dcook@sillscummis.com

600 College Road East
Princeton, NJ 08540
Tel: (609) 227-4600
Fax: (609) 227-4646

March 28, 2019

Via Email: tjb_orders@njd.uscourts.gov

Honorable Tonianne Bongiovanni, U.S.M.J.
United States District Court for the District of New Jersey
Clarkson S. Fisher Building & U.S. Courthouse
402 East State Street
Trenton, New Jersey 08608

Re: Joint Case Status Report
USI International, Inc. v. Festo Didactic Inc., No. 3:15-cv-08451

Dear Judge Bongiovanni:

Pursuant to Your Honor's text order entered on February 27, 2019, plaintiff USI International, Inc. ("USI" or "Plaintiff") and defendant Festo Didactic Inc. ("Festo" or "Defendant") jointly submit this status report in the above-referenced case.

This case is a breach of contract and fraud action relating to the sale of Defendant's electronic military equipment to the United States government for delivery to the Military Technical College of Oman ("MTC"). Plaintiff alleges that Defendant provided its net prices to USI to prepare and provide the offer to the MTC and is obligated to pay USI the difference between the contract price and Festo's net price for the equipment in exchange for Plaintiff's enabling the sale. On October 10, 2014, the deal that Plaintiff allegedly originated closed, and Defendant was awarded an approximately \$11.1 million contract to sell the equipment. Defendant to date has not paid Plaintiff any compensation for this contract. Plaintiff therefore commenced this action asserting claims for breach of contract, fraud and unjust enrichment. Defendant denies the allegations.

Sills Cummis & Gross
A Professional Corporation

Honorable Tonianne Bongiovanni, U.S.M.J.
March 28, 2019
Page 2

Discovery in this case was stayed pending a motion to dismiss in 2016. Plaintiff subsequently substituted counsel in this action on February 21, 2018 and filed a First Amended Complaint (“Complaint”) on June 21, 2018. The parties have been cooperating in diligently pursuing discovery and have exchanged document productions. Non-party discovery has been complicated by the need for discovery from the United States military. Freedom of Information Act (“FOIA”) requests and subpoenas were issued to the Navy by Plaintiff’s prior counsel and the parties recently received the Navy’s final production a few weeks ago on February 19, 2019. The parties do not anticipate filing any discovery motions in relation to the Navy production.

Plaintiff has attempted to serve deposition subpoenas on the Navy, but the Navy required that Plaintiff proceed through a formal *Touhy* request pursuant to 32 CFR 725.7. Plaintiff submitted that request to the Navy on February 14, 2019. The Navy approved the request on March 1, 2019 with respect to three of the Navy personnel, and informed us that a fourth individual is deceased. The Navy indicated that these depositions must take place in Florida and further advised that these three individuals will likely not be able to be scheduled together given their active travel schedules. Plaintiff’s counsel has requested dates in April and/or early May. As of March 25th, the Navy has informed us that it is working on dates of availability for the witnesses. A separate *Touhy* request has been submitted to the United States Army for the deposition of Lt. Col. Robert Hoffman. The Army has not issued a formal written response but has informed Plaintiff’s counsel that it is in the process of evaluating the request with Lt. Col. Hoffman.

As Your Honor is aware, Plaintiff is also seeking to depose a former Festo employee, Jeremy Duggan, who left Festo during the pendency of this case in December 2017 and currently lives in Ontario, Canada. The Court granted Plaintiff’s motion for a letter rogatory to compel Mr. Duggan’s deposition through the Canadian courts. Mr. Duggan has been served with notice of the letter rogatory proceeding through Plaintiff’s Canadian counsel. Canadian counsel has advised that there is a hearing date scheduled for June 18, 2019 for the letter rogatory in Canada. Canadian counsel is attempting to expedite the process if possible. Given the integral role of Mr. Duggan and the military witnesses, the parties both agreed that these non-party depositions should proceed prior to depositions of the parties.

Plaintiff has served notices to depose current Festo employees and Festo has indicated that it intends to take depositions of USI witnesses. Some of these witnesses reside abroad. Counsel have agreed to cooperate to work out dates for these depositions, which will be taken after the non-party depositions are completed. Pursuant to this Court’s prior Scheduling Order, the parties are each limited to eight fact witness depositions. The parties have not identified experts so there will not be any need for expert discovery after fact discovery is completed.

Sills Cummis & Gross
A Professional Corporation

Honorable Tonianne Bongiovanni, U.S.M.J.
March 28, 2019
Page 3

The parties appreciate the Court's assistance with this matter.

Respectfully submitted,



David L. Cook
Sills Cummis & Gross P.C.
Counsel to Plaintiff USI

/s/ Gregory F. Hauser

Gregory F. Hauser
Wuersch & Gering LLP
Counsel to Defendant Festo

/s/ Helen A. Nau

Helen A. Nau
Krovatin Klingeman LLC
Counsel to Defendant Festo